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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/686,467      | 10/12/2000  | Mitsuaki Oshima      | 2000_1420           | 3378             |

7590 07/30/2003

Wenderoth Lind & Ponack  
2033 K Street  
Suite 800  
Washington, DC 20006

EXAMINER

LE, AMANDA T

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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2634

DATE MAILED: 07/30/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**Advisory Action**

Application No.

09/686,467

Applicant(s)

OSHIMA ET AL.

Examiner

Amanda T Le

Art Unit

2634

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 July 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 7/14/03. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Art Unit: 2634

*Response to Arguments*

1. Applicant's arguments filed 7/14/03 have been fully considered but they are not persuasive.

Applicants argues that "applications 09/686463, 09/686,466 do not recite the feature of a distance in the vector space diagram between any closest two signal points in each signal point group is less than  $2d$ ". Nonetheless, choosing the distance ( $2d$ ) between any closest two signal points in each group to be less than that ( $2dxn$ ) of any adjacent two groups would have been within the level of one skilled in the art since such selection would enable easier detection of the signal points at the receiver. Further, selecting a specific value for the distance between two signal points in a constellation would have been a matter of choice to meet the design criteria of a particular application.

Accordingly, omitting the features of recited in the claims of applications 09/686463, 09/686,466 would result in the claimed invention of the present application. Such omission of features whose functions are not needed would have been obvious to one of ordinary skill in the art at the time of the invention.

The non-statutory double patenting rejection stated in the Office Action (1/14/03) is maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Amanda Le** whose telephone number is (703) 305-4769.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Stephen Chin**, can be reached at (703) 305-4714.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

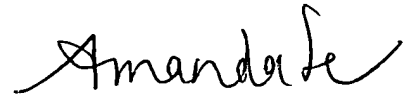
**or faxed to:**

**(703) 872-9314 (for Technology Center 2600 only)**

Art Unit: 2634

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

A handwritten signature in black ink, appearing to read "Amanda T. Le". The signature is fluid and cursive, with a large initial "A" and a stylized "L".

AMANDA T. LE  
PRIMARY EXAMINER